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United States District Court  
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P R O C E E D I N G S

THE CLERK: Okay, everyone, so Judge Kelley has entered the hearing.

And so, Judge, I've gone through and done attendance, so I won't have everyone state their name again. So I'm going to call the case and we're going to get started.

Today is Thursday 9, 2020, and we're on the record in Criminal Case No. 19-10080, the United States v. Sidoo, et al, the Honorable M. Page Kelley presiding.

Judge, I think you might be muted.

THE COURT: Okay, how's that?

THE CLERK: That's good.

THE COURT: Great. Okay, good afternoon. So I'm just going to assume, as Ms. Belmont said, that everyone, every defendant is represented here. And the reason I called this conference is that I have spoken recently with Judge Gorton, and, as you probably have surmised, he's very interested in keeping the case on a track for the October trial date. And I wanted to inform you of the schedule, which I consider to be a change in the schedule, and so I wanted to tell you as soon as possible, and I will post all these dates on the docket immediately after this hearing.

So the status conference on May 5 is going to be a final status conference, and the case will go to the District Court at that time. I appreciated getting the chart outlining

1 the status of the discovery requests, which is 1064 on the  
2 docket, and I was glad to see the government respond to that  
3 today. And I'm really glad the parties seem to be negotiating  
4 the production of discovery, and I hope you can continue to  
5 cooperate in this way, and that you will file motions for  
6 discovery only as a last resort when absolutely necessary.

7           So here are the dates concerning discovery practice  
8 going forward: The government will complete its production of  
9 discovery to the defendants by May 5. I know that some of the  
10 dates on the government's status report were beyond that date,  
11 and I did review that report with Judge Gorton just before this  
12 hearing, and these are the dates that he wishes to be set. So  
13 the government's production should be completed by May 5. The  
14 defendants shall file any remaining discovery motions by  
15 May 22. And since that date is beyond the date of May 5 --  
16 that is, when the case will go up to Judge Gorton -- then  
17 obviously those discovery motions go to Judge Gorton per his  
18 order, and the government then will have until June 5 to  
19 respond to the defendants' discovery motions. So Judge Gorton  
20 is expecting that discovery disputes will be resolved in June  
21 and that discovery will be complete, and then the case will be  
22 ready to move forward toward trial.

23           So there are seven or eight discovery motions still  
24 outstanding on the docket, and those motions will be denied  
25 without prejudice. And just to run through them, that's

1 No. 648, Mr. Abdelaziz's motion to compel *Brady* material;  
2 No. 681, the motion for Title III material filed by multiple  
3 defendants; No. 693, the motion to compel *Brady* materials by  
4 Defendants Mr. Giannulli and Ms. Loughlin; No. 696, motion to  
5 compel *Brady* material by Mr. McGlashan; No. 699, the motion to  
6 compel by Mr. Wilson; No. 801, the motion to compel by  
7 Mr. Zangrillo; No. 865, the motion to compel information  
8 concerning taxes by Mr. Wilson.

9 I think some of these were resolved, and the  
10 government has provided defendants with a lot of the categories  
11 of evidence that were requested in those motions. And, at any  
12 rate, the government and the defendant should confer, and by  
13 the date May 22, when defendants file their motions to compel  
14 any outstanding discovery, you can fold into it any outstanding  
15 requests from those motions, things that can't be worked out  
16 between the parties.

17 So in preparation for the final status conference on  
18 May 5, I would ask the parties by close of business on May 1,  
19 which is the Friday before that Tuesday, to file a joint final  
20 status report and just set out the regular information that you  
21 would; namely, whether anyone is asking that their case be set  
22 up for a Rule 11 hearing rather than for trial, the probable  
23 length of trial, whether any further motions other than the  
24 discovery motions -- well, never mind, I don't think that's --  
25 strike that -- whether any defendant intends to raise a defense

1 of insanity or public authority, and, if you can agree on it,  
2 what timetable the parties want for expert disclosures. I  
3 don't even know if anyone is intending to put on any experts,  
4 but I think it's prudent to go ahead and include those dates.  
5 And if you want my suggestion, I would suggest 60 days for the  
6 government and 30 days for defendants, but I'm open to whatever  
7 dates the parties are able to agree to.

8 So I'm happy to hear from anyone who has any questions  
9 or wants to bring up any other issues.

10 Okay, so I'm not hearing anything. If you're trying  
11 to say something and you're not making yourself heard, I don't  
12 know what to tell you to do. You can, like, wave your hands.

13 MR. HUESTON: Your Honor, it's John Hueston, but I  
14 think Marty had a point to address. I want to make sure that  
15 he hasn't somehow had technical difficulty, and if not, I'll  
16 follow up.

17 MR. WEINBERG: I'm here, if I could be heard.

18 THE COURT: Yes, absolutely.

19 MR. WEINBERG: Judge, we were just hoping that with  
20 the government signaling a May 15 and your Honor setting a  
21 May 5 date for the final production of discovery, that your  
22 Honor may reconsider and instead order the government to  
23 produce it by April 30 or May 1, so at least at the final  
24 status conference we could advise the Court what remaining  
25 discovery issues remain and what discovery motions we had. I

1 know your Honor set a schedule after the final status  
2 conference for the formal filing of motions, but we thought we  
3 collectively could be at least more informative with the Court,  
4 since your Honor has spent so many months resolving discovery  
5 disputes and hearing us and mastering some of the nuances of  
6 the discovery production issues, that if the government, again,  
7 was required to produce the final discovery four or five days  
8 before the current date, we could be more helpful to the Court,  
9 and through the Court to Judge Gorton, in identifying any major  
10 discovery issues that remain.

11 THE COURT: Okay. And does someone from the government  
12 want to respond to that?

13 MR. ROSEN: Am I on? Okay. Eric Rosen here. I mean,  
14 Judge, we're in the middle of a pandemic where everyone is  
15 doing their absolute best to get the discovery out. Just from  
16 a technological point of view, we have to work with our  
17 provider in South Carolina. Things are just moving a little  
18 bit slower than they normally had. You know, we're definitely  
19 going to do it on May 5, but I just think earlier, it would be  
20 very, very difficult, if not impossible.

21 THE COURT: So I think part of this could be remedied  
22 by the government's producing something similar to the chart  
23 that you filed today where you let people know by what date do  
24 you anticipate sending out certain discovery. I totally  
25 sympathize with your problems with your production. I do



1 think, if it makes any difference, you have a little breathing  
2 room on the *Ernst* case, and you can focus on this case. We had  
3 a status conference there today. And so I think your focus  
4 really should be getting the discovery out to these folks  
5 first. But I really have no authority to change these dates.  
6 So that's just the way it is. The dates are what they are.  
7 And they were actually even shorter dates, so this is as good  
8 as we get. And I do think the government --

9 Mr. Weinberg, did you see what they filed today?

10 MR. WEINBERG: Yes, I did, your Honor.

11 THE COURT: Okay. So I think perhaps what you should  
12 do is just do your best at the May 5 hearing. I'm happy to get  
13 a report on what's still outstanding, but since the case is  
14 going up to Judge Gorton, he is going to manage the discovery.  
15 And I think what you can't work out with the government, you  
16 can file motions with him by your deadline of May 22. But if I  
17 were you, I would really work on negotiating and not filing a  
18 lot of motions with Judge Gorton. I would be as conservative  
19 as possible with what you file.

20 MR. KELLY: Your Honor, I have a question. This is  
21 Brian Kelly. I don't know if you can hear me.

22 THE COURT: I can hear you.

23 MR. KELLY: Okay, great. You know, I have a question  
24 for you. Certainly there's a motion to compel right now that  
25 we're going to bring promptly now that the government has

1 indicated it's not going to give us the Singer material. We do  
2 not believe it's privileged. That's ripe right now. I don't  
3 need to wait for that until May 22. But there are things like  
4 the AUSA notes, they've had them since the beginning of the  
5 case. I don't know why they need till May 5 to review their  
6 own notes. So if the Court is saying it doesn't have the  
7 authority to change that May 5 date, so be it, but it will  
8 still entertain motions to compel that are ripe before then,  
9 correct?

10 THE COURT: Sure. Okay, if you want to file a motion  
11 to compel between now and May 5. I mean, I think what  
12 Judge Gorton was hoping was that you would continue to work  
13 with the government and see what is the government going to  
14 produce to you, and then file your limited motions for  
15 discovery after that. So I think the idea was to give the  
16 government enough time to produce what it's going to produce.  
17 But what you're saying, Mr. Kelly, is, there are certain  
18 categories of evidence, of discovery that the government has  
19 said they would not produce, or you just don't like the timing  
20 of it?

21 MR. KELLY: Well, you know, we continue to negotiate,  
22 of course, but if we reach a standstill on an issue, which we  
23 think we have on this one issue, then I think -- I don't see  
24 any reason to delay the motion to compel because we don't think  
25 anything is privileged by Mr. Singer. Once he became

1 cooperative, he consented to a search of his phone. So if he  
2 has communications on there and they're *Brady* or, you know,  
3 otherwise discoverable, we think we should get them. So all  
4 I'm saying I guess is, we will continue to work with the  
5 government; but if there are issues that we reach a standstill,  
6 we'd like to bring a motion to compel sooner rather than later  
7 just to keep this moving, rather than waiting until all this  
8 gets dumped on Judge Gorton later.

9 MR. ROSEN: Judge, if I could, we don't even know yet  
10 if Mr. Heller or, you know, how many documents will be  
11 privileged or that he's claiming privilege over. So the issue  
12 is not yet ripe, and we're going to -- you know, we're going  
13 through it, and we'll produce the log, as we said in our  
14 documents, but I don't think it's -- it's not a ripe issue yet  
15 because we don't know how many, if any, documents will be at  
16 issue.

17 MR. KELLY: Well, I think it is ripe because they said  
18 they're not going to produce it; they're going to give us a  
19 privilege log. So we're at a standstill on that particular  
20 issue. So if they're claiming these things are still  
21 privileged, well, okay, we'd like to file something brief to  
22 bring the issue to a head so they don't keep invoking this  
23 privilege. And we'll probably do the same thing with these  
24 so-called "sum and substance" statements which were deficient  
25 previously on the 302s. We don't think that's an adequate

1 response. But we're not trying to bring motions unnecessarily  
2 or prematurely. Hopefully we won't have to. All I'm saying is  
3 that if we can't get past a couple of these issues, we might  
4 bring a motion to compel with this Court before those dates.

5 THE COURT: Okay, so I'm happy for you to do that. I  
6 think Judge Gorton's idea was to kind of streamline the  
7 discovery practice and not have the case taking this direction,  
8 where we're going to have the final status on May 5, result in  
9 an avalanche of discovery motions filed while the case is still  
10 with me. So I'm not going to forbid you from filing discovery  
11 motions now, but I would just be very conservative about that.  
12 If you can work something out with the government, I would work  
13 something out with the government.

14 MR. HUESTON: If I can jump in just for a moment here,  
15 I do think that there is one item that is ripe for discussion  
16 today. The government indicated that they were going to  
17 produce by May 15, and now it's May 5, a letter summarizing any  
18 AUSA notes of Singer meetings that are inconsistent with or  
19 contain additional information for 302 reports. As your Honor  
20 can appreciate, any such notes is going to be absolutely  
21 central and pertinent to the pending motion for prosecutorial  
22 misconduct. There is no reason why the government should be  
23 waiting until May to produce a purported summary. They either  
24 have these notes or they don't. They can state so right now.  
25 And if they have such notes, they should be produced

1 immediately so that we can address them in our planned reply  
2 for the motions which are going in now before Judge Gorton. I  
3 mean, that simply can't wait, and I see no coronavirus or any  
4 other reason why the government can't provide an immediate  
5 production of those notes if they exist.

6 MR. ROSEN: Judge, we're reviewing our notes. We are  
7 doing that with all the other discovery requests. We are, you  
8 know, working remotely. It's difficult. We are planning to do  
9 it by I guess May 5 now, and we'll get those done. We don't  
10 believe there's any notes of any relevance to their motion  
11 filed two weeks ago.

12 THE COURT: So what you're saying, Mr. Rosen, is, you  
13 are going to produce that information, and you're going to  
14 produce it by May 5?

15 MR. ROSEN: Well, no. The -- I mean, I think we said  
16 in the chart here that as of now, we're planning to produce a  
17 letter summarizing the differences between the, you know,  
18 between any agent reports and notes and anything that's  
19 additional in the government's -- in any AUSA notes.

20 THE COURT: By what date?

21 MR. ROSEN: Sorry?

22 THE COURT: By what date?

23 MR. ROSEN: Let me pull that up. Sorry. My computer  
24 is just freezing.

25 Also, Judge, just to be also clear, that they have

1 requested the same discovery from Judge Gorton. The motion is  
2 pending before Judge Gorton, and it seems like now they're  
3 trying to revert back to the Magistrate Court to gain the  
4 relief that is not yet present before Judge Gorton. So I just  
5 don't see why we're double tracking the, you know, this brief  
6 that's already before the District Court.

7 MR. HUESTON: Your Honor, it's John Hueston. We've  
8 had these requests pending for months, and this is one that has  
9 been going back and forth. They've now stated that they're  
10 going to produce a summary of differences in their notes and  
11 agent notes from published 302s all during the pendency of a  
12 prosecutorial misconduct motion. Now, conveniently, a summary  
13 is going to be created and produced after all briefing is  
14 completed. If they have -- they seem to have identified some  
15 notes that are different. I ask the Court to order them to  
16 produce those immediately. What is the delay or reason for the  
17 delay? It shouldn't go to the bottom of the stack because it's  
18 centrally important to the prosecutorial misconduct motion.

19 MR. ROSEN: You've already asked -- it's already  
20 before Judge Gorton, this very same issue. You've asked him  
21 for discovery. The brief is currently pending. There's no  
22 need -- we said we'd now produce them by May 5. And the  
23 letter -- I think it's No. 10 in our status conference  
24 letter -- they're not entitled to our notes, you know, at the  
25 time. They're entitled to the differences between -- if

1 they're inconsistent, we intend to produce that.

2 THE COURT: So if I can just make sure I know what  
3 you're talking about, this is the government's reply to the  
4 defendants' discovery chart that was filed today, Item No. 10?

5 MR. HUESTON: Correct.

6 THE COURT: And you were saying you are going to do it  
7 by May 15, even though that motion is pending before  
8 Judge Gorton?

9 MR. ROSEN: Well, there's no -- the notes we don't  
10 believe or the 302s or any differences have anything to do with  
11 the prosecutorial misconduct motion based on, you know,  
12 obviously what we filed yesterday. And also they've asked for  
13 discovery as part of their motion for relief, so I think  
14 Judge Gorton should rule on that. And, you know, we're  
15 obviously going to comply with any order from the District  
16 Court, but now for No. 10, we said May 15, 2020, for the letter  
17 that we're going to provide, and now we'll do it on May 5, per  
18 Judge Gorton's order. There's no need to double track  
19 discovery where there's already a pending motion before the  
20 District Court on this very same issue.

21 THE COURT: Well, it seems like the motion is not  
22 really necessary anymore if you've agreed to do it, right?  
23 You've agreed -- they want the notes, and you're going to  
24 provide a letter summarizing the notes?

25 MR. ROSEN: We're going to summarize the differences

1 or inconsistencies between any agents' notes and any government  
2 notes. It has nothing to do with the misconduct motion that  
3 was filed two weeks ago.

4 MR. HUESTON: It absolutely has everything to do with  
5 it because the theory in the misconduct motion is that the  
6 government has concocted post hoc stories of intent that simply  
7 is different from the actual record, and so differences in what  
8 they are taking in notes of Singer meetings versus what winds  
9 up in the earlier published reports of agents is of central  
10 importance.

11 MR. ROSEN: And that's ripe before Judge Gorton now.  
12 We filed our response yesterday, and it's ripe. There's  
13 discovery requests in there. There's a request for a hearing.  
14 There's no need for, Judge, to revisit the issue in the chart  
15 of what we're going to provide anyway.

16 MR. KELLY: But if the government hasn't reviewed them  
17 yet, how can the government say it's not relevant to the  
18 pending motion?

19 THE COURT: Well, let me just say this:

20 So, Mr. Hueston, when is the motion -- I haven't looked  
21 this closely at the docket -- when is the motion to dismiss for  
22 prosecutorial misconduct ripe? Is it ripe now?

23 MR. HUESTON: The opposition, the government filed its  
24 opposition yesterday, and we are planning to meet and confer  
25 with the government and to ask for permission from the Court to



1 file a reply.

2 THE COURT: I see.

3 MR. ROSEN: But, Judge, we did (Inaudible) was a  
4 request for discovery as part of their motion for the  
5 misconduct, so why would it make sense to now do two discovery  
6 motions for that same issue, one before a Magistrate Court, one  
7 before a District Court, when this is what they've -- that's  
8 already pending before the District Court? We'll be prepared  
9 to provide them with that letter on May 5 per the Court's --

10 MR. HUESTON: Because you agreed to produce it, and  
11 it's relevant now, so it should be produced now.

12 MR. KELLY: The other point is that the "sum and  
13 substance" letters in the past were woefully deficient. The  
14 Court recognized that. The government did not recognize its  
15 *Brady* obligations. The rules are in place for a reason. The  
16 local rules require the stuff to be produced in a certain time  
17 frame. It hasn't been. So if these AUSA notes reflect  
18 inconsistencies that amount to *Brady*, we should get it sooner  
19 rather than later, and we shouldn't just kick the can down the  
20 road so the government can lump it in with everything else  
21 that's coming in front of Judge Gorton.

22 MR. ROSEN: Well, we disagree with that obviously,  
23 that assessment, but we are prepared to meet the Court's  
24 deadline, which is May 5 of 2020, and we will do that. It has  
25 nothing to do with the misconduct motion, which is already

1 pending before a different court.

2 MR. KELLY: How can you say it doesn't have anything  
3 to do with the motion if you haven't even reviewed it yet to  
4 determine whether there's *Brady*?

5 THE COURT: Okay, Eric, let me just interrupt here,  
6 counsel arguing with each other.

7 So, Mr. Rosen, just in an effort, which I think is in  
8 the spirit of what Judge Gorton really wants to see happen here  
9 to kind of streamline this and stop the sort of nonstop filing  
10 of motions back and forth, concerning No. 10 on your status  
11 report, "Provide all AUSA notes of meetings/calls with Singer,"  
12 and what you're saying is, "The government will provide a  
13 letter summarizing any AUSA notes of Singer meetings that are  
14 inconsistent with or contain information in addition to that in  
15 FBI/IRS reports." Let's just go ahead and get that done. And  
16 if the defendants think this is relevant to their motion to  
17 dismiss, I think it's better to get it done sooner rather than  
18 later, just to prevent exactly the kind of delays and filings  
19 that Judge Gorton wants to see streamlined. So --

20 MR. ROSEN: But they're getting it regardless. Judge,  
21 I think we have seventeen outstanding motions that we need to  
22 respond to also by April 30. We're doing our absolute best.  
23 We haven't done this letter yet. We're going through. We're  
24 going to get it done. It doesn't take five minutes. We don't  
25 have, you know, the resources of the defense. We're working

1 very, very hard to get this done. But, Judge, Judge Gorton I  
2 think set out a good schedule for May 5, and we'll comply with  
3 that schedule.

4 THE COURT: Okay, so what I'm going to do is, I will  
5 tell Judge Gorton that there are materials that the defendants  
6 believe are relevant to the motion to dismiss for prosecutorial  
7 misconduct that you will not get until May 5; and that in the  
8 interest of giving the government the opportunity to thoroughly  
9 respond, that they will provide this information by May 5. And  
10 I will alert Judge Gorton that your discovery motion -- does  
11 anyone know the docket number of the discovery motion?

12 MR. ROSEN: Of the misconduct motion?

13 THE COURT: I know the docket number of the misconduct  
14 motion, but the discovery motion that Mr. Rosen keeps saying is  
15 before Judge Gorton, is it part of the motion?

16 MR. ROSEN: Yes.

17 THE COURT: Yes, okay. Anyway, I'm going to tell him  
18 that there's outstanding discovery concerning that motion that  
19 will be provided on May 5, and so he will be aware of that.  
20 But I do --

21 MR. ROSEN: The government's position -- oh, sorry.

22 THE COURT: I do want to stress that Judge Gorton was  
23 really firm that there are no continuances on these dates, so  
24 May 5 is really a firm deadline.

25 MR. WEINBERG: Judge, could I make a request, which is

1 that the government provide that on May 4 so that if the  
2 summary reflects material *Brady* issues, we can at least bring  
3 to your Honor's attention on May 5 that we want not their  
4 summary but the notes themselves, and at least resolve that  
5 issue, which might, as Mr. Hueston has said, be central to the  
6 motion to dismiss.

7 MR. ROSEN: We will try and get this done as soon as  
8 possible, Judge, but I think the point from earlier was that  
9 Judge Gorton will handle the remaining discovery motions in  
10 May. So I don't understand why we're trying to get this done  
11 prior to the final status conference when we have these  
12 deadlines in place.

13 THE COURT: Well, see if you can do that part of the  
14 discovery, Mr. Rosen, by May 4, okay, the No. 10 on your  
15 summary.

16 MR. ROSEN: Yes. Yes, we will.

17 THE COURT: Okay, all right. So what else?

18 MS. MINER: Your Honor, if we could get an estimate of  
19 how much discovery is still out there to be produced by May 5.  
20 I mean, we still haven't gotten our client's emails that the  
21 government has had for, like, ages. I'm just concerned, if the  
22 quantity is so large, then -- you know, I understand the  
23 government is under constraints but so is defense counsel.

24 THE COURT: Okay.

25 MR. ROSEN: You should have gotten the emails in

1 January. The relevant emails responsive to Attachment B were  
2 provided in January.

3 MS. MINER: But I haven't gotten the entire set of  
4 emails. I mean, you might consider some things relevant, and I  
5 might consider different things relevant. Your chart said that  
6 we would get them by --

7 MR. ROSEN: Right, we were --

8 THE COURT: Mr. Rosen, any idea how much is still  
9 outstanding, a rough ballpark?

10 MR. ROSEN: I don't, but we will -- we will -- you  
11 know, we'll try to get a handle on that and update the  
12 defendants as we go through it.

13 THE COURT: Okay. All right, so we'll see everyone  
14 again on May 5. And anything else from anyone at this time?

15 MR. KELLY: Not from me, your Honor.

16 MR. ROSEN: No, your Honor.

17 MR. FLASHNER: Sorry. Cory Flashner, just trying to  
18 get in here, okay, if you can hear me. With regard to those  
19 pending Rule 17 motions that are before you, I'm assuming,  
20 perhaps incorrectly, that those will stay in front of you? And  
21 Rule 17s that will be filed in the coming weeks, those should  
22 be filed with you as well, as the case is still in your  
23 session?

24 THE COURT: Yes. I think Judge Gorton may refer  
25 certain things back. But what Rule 17 motions are still

1 pending? Do you know?

2 MR. FLASHNER: There are at least some motions with  
3 regard to USC that are still pending, and then there are others  
4 that we are close to filing with regard to other third parties  
5 that are nonparties in the case. It just seems as though,  
6 given the amount of time the Court, certainly you, has spent  
7 educating yourself on the issues, to re-educate Judge Gorton  
8 and go back and recreate the wheel doesn't seem efficient for  
9 anyone.

10 THE COURT: Okay, so I will just ask you at the close  
11 of this hearing to email Ms. Belmont about any pending motions.  
12 And then, you know, if you have Rule 17(c) motions prior to  
13 May 5, I'll definitely rule on them, but if they're after that,  
14 Judge Gorton, it will be up to Judge Gorton to refer them back.

15 MR. FLASHNER: Okay, thank you.

16 THE COURT: Thank you. Okay, anything else? Okay,  
17 all right, everyone, thank you very much, and we'll see you  
18 May 5.

19 (Adjourned, 3:44 p.m.)  
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C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS ) ss.  
CITY OF BOSTON )

I, Lee A. Marzilli, Official Federal Court Reporter,  
do hereby certify that the foregoing transcript, Pages 1  
through 22 inclusive, was recorded by me stenographically at  
the time and place aforesaid in Criminal No. 19-10080-NMG,  
United States of America v. David Sidoo, et al, and thereafter  
by me reduced to typewriting and is a true and accurate record  
of the proceedings.

Dated this 22nd day of April, 2020.

/s/ Lee A. Marzilli

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LEE A. MARZILLI, CRR  
OFFICIAL COURT REPORTER